

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 2007-61
)	
[REDACTED], COURTNEY MATTHIAS,)	
[REDACTED], MONICA BROWNE, JUDY)	
STOWE, and VISHMA SHIVANA PERSAD,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Jason T. Cohen, AUSA
St. Thomas, U.S.V.I.
For the plaintiff.

Clive C. Rivers, Esq.
St. Thomas, U.S.V.I.
For defendant Courtney Matthias.

Leonard B. Francis, Esq.
St. Thomas, U.S.V.I.
For defendant Monica Browne.

George Hodge, Esq.
St. Thomas, U.S.V.I.
For defendant Judy Stowe.

Jesse A. Gessin, AFPD
St. Thomas, U.S.V.I.
For defendant Vishma Shivana Persad.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of the government to continue the trial date in this matter and to enter an order finding excludable delay under the Speedy Trial Act.

This matter was indicted on November 8, 2007. A superseding indictment was filed on December 6, 2007. Defendants Judy Stowe and Vishma Shivana Persad were arraigned on November 14, 2007. Defendants Courtney Matthias and Monica Browne were arraigned on December 19, 2007. Arrest warrants have issued for the remaining two defendants, but they have not yet appeared or been taken into custody.

On December 28, 2007, the government filed an *ex parte* motion to provide inventory notice of wire interceptions and to disclose the recorded statements of the defendants. The Court granted that motion on January 23, 2008. The government now requests that the period of time from the filing of the government's motion up to and including the Court's ruling on that motion be excluded from the defendants' Speedy Trial count.

The Speedy Trial Act requires that trial commence within seventy days of a defendant's initial appearance or of the filing and making public of the indictment, if later. See 18 U.S.C. § 3161(c). Delay resulting from any pretrial motion, from the date of the filing of the motion through the date of the prompt disposition of the motion, is excluded from the computation of Speedy Trial Act time. See 18 U.S.C. § 3161(h)(1)(F). Any pretrial motion, including a motion for extension of time, is a pretrial motion within the meaning of Section 3161(h)(1)(F) and

creates excludable time, even if it does not in fact delay trial. See *United States v. Novak*, 715 F.2d 810, 813 (3d Cir. 1983), cert. denied, 465 U.S. 1030 (1984).

The Speedy Trial act also allows district courts to grant continuances on finding that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." See 18 U.S.C. § 3161(h)(8)(A); see also *United States v. Adedoyin*, 369 F.3d 337, 341 (3d Cir. 2004). Under the statute, courts must justify their continuances by an oral or written statement setting forth on the record their reasons for granting them. *Id.*; see also *United States v. Lattany*, 982 F.2d 866, 877 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993). The discretion of courts "is not unfettered, however." *United States v. Watts*, Crim. No. 2004-153, 2005 U.S. Dist. LEXIS 22505, at *7 (D.V.I. Sept. 30, 2005). The statute lists factors that courts must consider in granting such a continuance. See, e.g., *United States v. Rivera*, 863 F.2d 293, 295 (3d Cir. 1988) (holding that under the totality of the circumstances, the Speedy Trial Act's requirements were met when the district court articulated on the record one of the factors listed in the statute as the reason to exclude time, such as a continuance to allow new counsel to adequately prepare for trial).

Here, the Court finds that the ends of justice are met by excluding the time from the government's motion up to and including the Court's ruling on that motion. Rule 16 of the Federal Rules of Criminal Procedure addresses discovery in criminal proceedings. Rule 16(a)(1)(B)(i) specifically requires the government to turn over any relevant written or recorded statement by a defendant that is in the possession, custody, or control of the government. FED. R. CRIM. P. 16(a)(1)(B)(i).

In its motion, the government, of its own accord, requested permission to turn over to the defendants certain evidence of wiretap intercepts and recorded statements by the defendants that this Court had previously ordered sealed. The government filed its motion to comply with its discovery obligations under Rule 16. Because the intercepts and recorded statements were sealed by Court order, the government could not comply with its Rule 16 obligations until the Court granted the government's motion. The defendants, in turn, did not have those materials to review during their preparations for trial.

Thus, in accordance with 18 U.S.C. § 3161(h)(8)(B)(iv), the Court finds that a failure to grant a continuance of the trial would deny counsel for the defendants "the reasonable time necessary for effective preparation." A continuance will allow the government to comply with its Rule 16 obligations, thus

affording the defendants ample opportunity to review discovery materials well in advance of trial. *See, e.g., United States v. Fields*, 39 F.3d 439, 444 n.4 (3d Cir. 1994) ("An ends-of-justice continuance may be justified on grounds that one side needs more time to prepare for trial") (quoting *United States v. Dota*, 33 F.3d 1179 (9th Cir. 1994)); *see also United States v. Moscoso*, Crim. No. 05-143, 2005 U.S. Dist. LEXIS 10217, at *18 (E.D. Pa. May 25, 2005) (finding that "the ends of justice will be served by granting defense counsel an appropriate period of time to receive all the discovery in this matter; to review it in a meaningful way with their respective clients; [and] to conduct an independent investigation of the information provided").

For the reasons stated above, it is hereby

ORDERED that the motion is **GRANTED**; it is further

ORDERED that the trial of this matter is continued to **9:00 a.m. on Monday, March 3, 2008**; and it is further

ORDERED that the period from December 28, 2007, up to and including January 23, 2008, shall be excluded from the defendants' Speedy Trial count.

Dated: February 1, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

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